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CHARLES ELMORE C

Supreme Court of the United States

No. 574.

GENERAL MOTORS ACCEPTANCE CORPORATION, a Corporation,
Intervener and Appellant,

vs.

UNITED STATES OF AMERICA,
Libelant and Appellee,

ONE (1) CHEVROLET SEDAN AUTOMOBILE,
Engine Number 1-247-061,
Respondent.

GENERAL MOTORS ACCEPTANCE CORPORATION, a Corporation,
Intervener and Appellant,

vs.

UNITED STATES OF AMERICA,
Libelant and Appellee,

ONE (1) CHEVROLET COUPE AUTOMOBILE,
Engine Number 113-462,
Respondent.

GENERAL MOTORS ACCEPTANCE CORPORATION, a Corporation,
Intervener and Appellant,

vs.

UNITED STATES OF AMERICA,
Libelant and Appellee,

ONE (1) CHEVROLET ROADSTER AUTOMOBILE,
Engine Number 966-050,
Respondent.

HOWARD AUTOMOBILE COMPANY OF LOS ANGELES,
a Corporation,
Intervener and Appellant,

vs.

UNITED STATES OF AMERICA,
Libelant and Appellee,

ONE (1) BUICK COUPE AUTOMOBILE,
Engine Number 2-083-140,
Respondent.

SUPPLEMENTAL BRIEF OF AMICUS CURIAE.

JOSEPH G. MYERSON,
New York City.
Amicus Curiae.

THE COURT PRESS, INC.

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The government's brief has very strongly urged that the intent of Congress that the Prohibition Act should

not supersede the Customs sections is indicated by the fact that Section 26 by its terms refers only to transportation and makes no mention of importation.

We submit that is a very strong argument indicating that the Customs sections have not been superseded generally, that is to say, as to cases not involving transportation, but that it is no answer to the proposition that in a case of transportation where importation also exists, Section 26 is paramount.

It is a confusing thought, rendered so especially because it is difficult to conceive of an importation without transportation, but if we approach the proposition subjectively without attempting to picture the importation, the confusion is dissipated.

Perhaps this will be made somewhat easier by going back to the proposition that was submitted to this Court in the *Richbourg* case.

This Court had held in the *Ford Coupe* case that the Revenue Act had not been superseded by Section 26.

> "The serious question presented is whether there is such a direct conflict between the National Prohibition Act and particularly Section 26 of Title II thereof, and Section 3450 of the Revised Statutes as to render the latter section inoperative and unavailable to the government where a vehicle was being used for the purpose of depositing and concealing illicitly distilled liquors under the circumstances set forth in the libel." *U. S.* v. *One Ford Coupe Automobile*, 272 U. S. 321, 325.

It will be remembered that Section 3450 applies to tax unpaid liquor deposited or concealed or removed to defraud the government of the tax. Section 26 makes no reference whatsoever to concealment, no reference whatsoever to deposit, no reference whatsoever to removal (ex-

cept that transportation is implied within the meaning of the term "removal", but then of course transportation is also implied within the meaning of the term "importation"), no mention is made in Section 26 of unpaid taxes nor of frauds upon the government.

The fact that Section 26 refers to transportation alone and makes no reference to the elements found within Section 3450 might very well have been the basis of the Court's finding in the *Ford Coupe* case. Indeed, Mr. Justice Brandeis points out at page 334: "While the second sentence in Section 26 uses the words 'transported or possessed' the context makes it very plain that the possession intended is possession in transportation. Hence that section is applicable only if a person is discovered in transporting intoxicating liquor in violation of law. *There is no allegation in the libel that the automobile had been so discovered or was being so used.*" (Italics ours.) So that appreciating the limitations of the language of Section 26 in that the section refers only to transportation, Mr. Justice Brandeis found no conflict between Section 3450 and Section 26, only because an element of transportation was lacking.

In like manner the fact that Section 26 contains no specific reference to importation may properly become the basis of a finding by this Court that Section 26 does not supersede the Customs sections in cases which do not involve transportation, but would furnish no basis for a finding that Section 26 does not supersede Section 3061-2 in a case which does involve transportation, however incidental.

That was the situation, then, before the decision in the *Richbourg* case. In that case your *Amicus*, as attorney for the petitioner, Richbourg Motor Company sub-

mitted the proposition that whereas Section 26 had not generally superseded Section 3450, nevertheless in a case of violation of Section 3450 where transportation was involved, Section 26 became paramount (See Mr. Justice Stone's concurring opinion in the *Ford Coupe* case at p. 335 and Mr. Justice Butler's concurring opinion in the case of *Port Gardner Investment Co.* v. *United States*, 272 U. S. 564, 567, where he said: "The substance of that question is whether the Prohibition officer discovering one in the act of transportation may disregard the plain and direct commands of Section 26 to proceed against the vehicle as there directed. I think he has no more right to ignore that command than he has to let the liquor and offender go. The law makes the election").

This Court sustained that proposition by unanimous opinion.

No reason has been indicated why the failure of Section 26 to refer to importation should operate to continue Sections 3061-2 paramount as against Section 26 which would not also operate to make Section 3450 supersede Section 26, and unless this Court is prepared absolutely to abandon the doctrine of the *Richbourg* case it is respectfully submitted that Section 26 must be declared paramount to Sections 3061-2 in the cases at Bar.

But Congress did not intend that any section other than Section 26 should be employed in the forfeiture of vehicles used illegally to import intoxicating liquor.

It has been pointed out that schedule 8 of the Tariff Act of 1922 (42 Stat. 897) and schedule 8 of the Tariff Act of 1930 (46 Stat. 639) make imported liquors subject to duty therein scheduled. And it has been pointed out that in both Tariff Acts Congress provided (Par. 813, Schedule 8, Tariff Act of 1922, 42 Stat. 898; Par. 814,

Schedule 8, Tariff Act of 1922, 42 Stat. 898; Par. 814, Schedule 8, Tariff Act of 1930, 46 Stat. 640) that "any such wines, spirits or other liquors or articles imported or brought into the United States without a permit shall be seized and forfeited in the same manner as for other violations of the Customs Laws."

That provision of law, not so much by reason of what it provides as by reason of what it omits, is the best indication we have of the intent of Congress that Section 26 shall continue to be applicable to the forfeiture of vehicles and vessels engaged illegally in the importation of intoxicating liquor, for **nowhere in these tariff acts is specific provision made for the forfeiture of the vessel or vehicle used to import intoxicating liquors.**

This is of the utmost significance. It is no answer to say that under the sections generally providing for forfeiture of vehicles used illegally to import merchandise such forfeiture can be had. Because if Congress had intended the general forfeiture provisions to apply to liquor violations, there was no reason to have provided, as above quoted, specifically for the forfeiture of the intoxicating liquor. Such liquor could have been forfeited under the general provisions affecting all illegally imported merchandise, and the very fact that Congress made this specific provision in respect of liquor gives greater significance to the failure of Congress to make specific provision in respect of forfeiture of the vehicle.

We do not subscribe to the doctrine of the dominant character of the enterprise urged upon this Court by counsel in the *Commercial Credit Company* cases.

Respectfully submitted,

JOSEPH G. MYERSON,
Amicus Curiae.